Dodd Frank 2014 - Frequently Asked Questions

Q: What is a Qualified Mortgage (QM)?

A: For a loan to be a Qualified Mortgage, the following must be true:

- Points and fees do not exceed 3% of "total loan amount" or guidelines offered below for loans under $100,000
- *See FAQ regarding "total loan amount" below*

LOAN AMOUNT	POINTS & FEES LIMIT
$100,000 or more	3% of "total loan amount"
$60,000 - $99,999	$3000
$20,000 - $59,999	5% of "total loan amount"
$12,500 - $19,999	$1000
$12,499 and below	8% of "total loan amount"

- Product does not contain risky/toxic features
    - Negative amortization, interest-only features, or balloon features
- Loan term does not exceed 30 years
- Debt-to-income ratio is less than or equal to 43%
    - **Notes:**
        - Temporary QM DTI exception for GSE/Agency loans (defined as loans eligible to be purchased or guaranteed by Fannie or Freddie or insured/guaranteed by HUD, VA or USDA)
        - All other QM requirements, aside from DTI limit, apply to these loans.

Q: Will Caliber cap the DTI at 43% for all loans?

A: Since the Qualified Mortgage rules provide for a 7 year exemption from the 43% DTI cap for loans eligible for purchase, insurance or guarantee from Freddie Mac, Fannie Mae, HUD, VA, and USDA, Caliber will follow agency guidelines regarding DTI caps. If the loan is eligible for purchase, insurance or guarantee by one of these agencies with a higher DTI, Caliber will originate the loan even though the DTI exceeds 43%

Since the exemption does not apply to non-agency loans, Caliber will apply the 43% cap to non-agency products, such as jumbo loans.

Q: What is the "Total Loan Amount" that is used for purposes of the QM 3% total points and fees test?

A: "Total loan amount" is defined in Regulation Z, section 1026.32(b)(4) as a calculation of the TIL Amount Financed minus certain points and fees. For this reason, the QM "Total Loan Amount" is most often an amount that is less than the note/loan amount (which is used to calculate the Lender Paid Compensation amount).

Q: How do I know which fees are included in the Points and Fees test?

A: Caliber has created the HOEPA/QM Points and Fees Test overview document that explains which fees are included and excluded from the test. In addition, Caliber's Dodd Frank Training slides provide detailed explanations of the fees that are included in the points and fees test. These documents are located at the following locations:

- https://mycaliber.com/training/Dodd%20Frank%20Resources/QM%20Points%20and%20Fees%20Test.pdf
- https://mycaliber.com/training/Dodd%20Frank%20Resources/Dodd%20Frank%20Training%2012_2013.pdf

Q: How does the Upfront MI selected impact the QM 3% total points and fees test?

A: The Private Upfront MI selection may play a critical role in the results of the 3% test. The entire amount of nonrefundable upfront PMI premiums paid by the borrower will be included in the test while other MI offerings (like Lender Paid MI) would be excluded from the test. Up to 1.75% of refundable PMI Upfront Premiums paid by the borrower may be excluded if they are prorated and refunded automatically upon satisfaction. However, while the law does not fully define "refundable on a prorated basis," informal guidance from the CFPB is that refundable MI plans where the refund is not available for the life of the loan do not qualify for this exception. Since most refundable plans only permit refunds within the first 3-5 years of the loan, those plans do not qualify under the current exclusion based on this guidance, and the total amount of Private Upfront MI would still be included. Caliber will be closely monitoring this issue.

Q: What will happen if a loan fails the QM 3% total points and fees test?

A: Caliber will not close a loan that does not pass the 3% test, so loans should be structured and locked to ensure compliance. In the case of Borrower Paid Wholesale loans or Mini Correspondent loans, the Business Partner's compensation/fees may be reduced. The Wholesale Business Partner is responsible for LO Compensation compliance for Borrower Paid loans.

Q: Other lenders offer 3% Lender Paid Compensation. Why doesn't Caliber offer this option?

A: Caliber does not offer 3% Lender Paid Compensation as many loans would immediately fail the 3% test solely based on the discrepancy between the lower "Total Loan Amount" used for the QM 3% test, and the loan amount used to determine the Lender Paid Compensation.

Q: Will a broker be allowed to charge 3% on borrower paid loans?

A: For the same reasons stated above, a broker fee of 3% will almost always exceed 3% of the "total loan amount" resulting in a loan that fails the QM 3% points and fees test. The broker is responsible for ensuring compliance with both the 3% points and fees cap, and LO Compensation Rules.

Q: How do Discount Points paid by the borrower impact the QM 3% total points and fees test?

A: All or some discount points paid by the borrower may be excluded if the undiscounted interest rate is not > the APOR + 2%, **and** the discount points charged are "bona fide"

- If undiscounted rate > APOR on last rate set date* by no more than 1%, exclude up to 2 bona fide points
- If undiscounted rate > APOR on last rate set date* by no more than 2%, exclude up to 1 bona fide point
- **Undiscounted interest rate –** the interest rate from which the mortgage's interest rate will be discounted. This is the adjusted rate closest to par with a rebate that borrower would have received absent payment of the discount points. If a rate without rebate is not available on the loan's rate sheet, it is the rate with the lowest cost.

- **Last rate set date** – The last date the rate is set is the later of the initial, relock or change of interest rate lock date.
- **Bona fide** – knowingly paid and reduces the consumer's interest rate by an amount that reflects established industry practices, such as the secondary market norms.

NOTE: All discount points may be excluded from the points & fees calculation if they are paid by the seller, lender or third-party.

<u>Here is a 5-step test to determine if the discount points on a loan may be excluded:</u>

1. Are discount points being charged – meaning, is the loan locked at a cost?
   a. If NO, skip discount point evaluation. There would be nothing to add to the points and fees calculation.
   b. If YES, go to step 2
2. Are any discount points being paid by someone other than the borrower – seller, broker, lender, other?
   a. If NO, take all points to Step 4 as **Gross Discount Points**
   b. If YES, take only amount of points paid by borrower to Step 4. If all points are paid by someone other than the borrower, discount points are excluded from points and fees calculation.
3. Determine **Undiscounted Rate (see H2O Lock Screen for Undiscounted Rate)**
   The undiscounted rate is the fully adjusted rate closest to par with a credit. If there is not a rate with credit available, it would be the fully adjusted rate closest to par with a charge.
4. Determine if there are **Undiscounted Rate Points** (a charge associated with the adjusted **Undiscounted Rate**)
   a. If YES, calculate **Gross Discount Points** minus **Undiscounted Rate Points** = **Eligible Discount Points** The **Eligible Discount Points** would be excluded from the points and fees test based on the rules in Step 5. All points that are not considered **Eligible Discount Points** would be included in the points and fees calculation.
   b. If NO, all points = **Eligible Discount Points.** The **Eligible Discount Points** would be excluded from the points and fees test based on the rules in Step 5.
5. Compare **Undiscounted Rate** to **APOR** on the most recent of the following occurrences: initial lock date, relock date or date the interest rate changed.
   a. If **Undiscounted Rate** is less than or equal to APOR + 1, then up to 2 points of the **Eligible Discount Points** can be excluded
   b. If **Undiscounted Rate** is greater than APOR + 1 but less than or equal to APOR + 2, then up to 1 point of the **Eligible Discount Points** can be excluded
   c. If **Undiscounted Rate** is greater than APOR + 2, all points are included

Q: What happens if the Undiscounted Rate comes with a charge of 2.75%? Are those points included in the points and fees test?

A: Yes, all points associated with the undiscounted rate would be included in the points and fees test. This means that all other includable points and fees would be limited to 0.25% of the total loan amount.

Q: For Mini Correspondent loans, is the SRP included in the 3% total points and fees test?

A: No. Mini Correspondent loans are considered secondary market transactions as the Mini Correspondent Business Partner is the creditor and Caliber is purchasing a closed loan. For this reason, the lock SRP is not included in this test.

Q: How can Loan Level Pricing Adjustments (LLPAs) be applied to meet QM standards?

A: Any price adjustment that is included in the rate is excluded from the points and fees test.

Q: Are Caliber's lender fees included in the points fees test?

A: Yes. However, beginning in January, Caliber will offer an option that will allow the Business Partner to select a rate with Lender Fees included to reduce the overall amount of fees included QM 3% total points and fees test. In addition, Lender Fees paid by the lender, seller or third party are not included in the points and fees test.

Q: Will Caliber originate/purchase Qualified Mortgages that are also Higher Priced Mortgage Loans (HPMLs)?

A: Caliber will only originate/purchase Safe Harbor Qualified Mortgages. To determine if a loan is within QM Safe Harbor standards apply the following test.

Loan Type	1ST LIEN	2nd LIEN
Non-FHA Loans	APR < 1.5% + APOR	APR < 3.5% + APOR
FHA Loans	APR ≤ 1.15% + FHA Annual Premium + APOR	N/A

If a loan exceeds the thresholds above, Caliber will not originate/purchase the loan. Loans may be restructured to meet QM requirements by reducing the rate, switching PMI from upfront to monthly, or applying available credits to fees.

Q: What are the QM points and fees provisions specifically in regards to Affiliated Companies?

A: There are two separate rules regarding fees paid to Affiliated Companies. The first rule is that any prepaid finance fees not explicitly excluded (see Group 1 fees QM Points and Fees Test) paid to and retained by an affiliate of the creditor, broker or loan originator are included in the Points and Fees calculation. These fees would typically be Processing Fees, Tax Service Fees, Settlement/Closing Agent, Attorney Review Fees, and other title fees that are considered finance charges and not included as real estate related fees below.

The second rule is that any real estate related fees under 1026.4(c)(7) paid to and retained by an affiliate of the creditor, are included in the QM points and fees test. Real estate related fees that would be included if retained by an affiliate include:

- Title fees: title examinations, abstracts, survey, title insurance;
- Document preparation fees; Attorney fees;
- Notary and credit report fees;
- Appraisal or inspection fees;
- Amounts paid in escrow, except those held for future taxes

For Wholesale transactions, Caliber is the creditor, and therefore, any real estate related fees retained by an affiliate of Caliber would be included in the points and fees test. At this time Caliber has no affiliates. Please see the includable Group 1 fees for includable title fees if paid to an affiliate of the broker or loan originator. For Mini Correspondent, the Mini Correspondent Business Partner is the creditor, and therefore, any fees retained by an affiliate of the Mini Correspondent would be included in the points and fees test.

Q: What is the definition of an "affiliate" regarding fees included in the QM 3% Points and Fees cap under the HOEPA and QM rules?

A: The HOEPA/QM calculation of points and fees includes certain charges paid to affiliates of creditors, brokers and/or loan originators (discussed above). In the Small Entity Compliance Guide, the CFPB defines "affiliate" as "any company that controls, is controlled by, or is under common control with, your company". The CFPB also issued "unofficial staff guidance" in a webinar on October 17, 2013, in which it was stated that the definition of an affiliate is any company that controls, is controlled by, or is under common control with, another company as set forth in the Bank Holding Act of 1956 (the "Act"). The Act states that any company has control over a bank or over any company if:

A. the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;
B. the company controls in any manner the election of a majority of the directors or trustees of the bank or company;
C. the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. [12 USC Section 1841 (a) (2)]

Although the test under (A) and (B) are straightforward, (C) is vague and the "unofficial staff guidance" does not provide any information regarding how the CFPB will interpret what "directly or indirectly exercises a controlling influence" means for purposes of the points and fees test. Although this is a more limited definition of affiliate than RESPA's 10%, we caution the CFPB may use subsection (C) to apply the term affiliate to companies with less than 25% ownership.

Q: Are 3rd party processing fees included in the QM points and fees calculation?

A: The inclusion of 3rd party processing fees in the QM points and fees calculation is dependent on whether the 3rd party processing company is an affiliate of the creditor, broker or loan originator. If the company is an affiliate, the fee would be included in the QM points and fees calculation because all prepaid finance charges are included, unless explicitly excluded. Slide 25 of the Dodd Frank Training explains that prepaid finance charges, which include 3rd party processing fees, are excluded only if they are reasonable, bona fide and not paid to an affiliate of the creditor, broker or loan originator.

NOTE: If the broker's compensation is lender-paid, a 3rd party processing fee may not be paid to an affiliate of the broker or loan originator as that would violate Regulation Z LO Compensation rules. Caliber allows 3rd party processing fees, subject to product specific restrictions. FHA does not allow a borrower to pay a 3rd party processing fee, and VA will only allow the borrower to pay this fee if the sum of any loan origination fee + previously unallowable fees (which include processing fees) does not exceed 1% of the loan amount.

Q: Can brokers select different compensation percentages for lower loan amounts so they can earn the maximum amount on loans below $100,000 for the increase points and fees caps?

A: Unfortunately, Regulation Z Loan Originator Compensation Rules restrict creditors from developing different compensation percentages based on ranges of loan amounts. A creditor may establish a minimum and maximum cap, but due to the definition of "proxy" under the new rules, establishing compensation selections based on ranges of loan amounts would be considered compensation based on a proxy for terms of the transaction.

Q: Caliber just rolled out an Extended Lock program. Under this program, Caliber will collect an upfront fee, but it's refundable at closing to the borrower. Since it is refundable, will the fee be included in the 3% cap?

A: It is not, but the fees it is applied to would be included if they are one of the fees included in QM Points and Fees. The rate lock fee is not included, but any portion of that fee that is applied to includable fees, would be still included. For example, if the rate lock amount is applied to lender fees at closing, the lender fees would be included. If it is applied to non-points and fees costs, it would not

Q: Where is the best place to locate the current APOR? Will Caliber add this rate to our daily rate sheet?

A: Caliber will add the following link to the rate sheets, and will work on an enhancement to add the APOR amount in a follow up deployment. In the meantime, the APOR tables are located at http://www.ffiec.gov/ratespread/aportables.htm.

On this site, there are separate links to the APORs based on the amortization type and they will need to look to the column for the applicable amortization term and the row that applies to the lock date:

- Fixed APOR - http://www.ffiec.gov/ratespread/YieldTableFixed.CSV
- ARM APOR - http://www.ffiec.gov/ratespread/YieldTableAdjustable.CSV

Q: For the new Jan. 10 RESPA requirement that the borrower must be given a list of ten homeownership counselors, who will be responsible for doing that?

A: Dodd Frank updated RESPA to require the borrower to receive a List of Homeownership Counseling Agencies no later three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application. This is the same requirement as the Good Faith Estimate, so it must be provided within 3 business days of the application date (1003 date). This means that the list must be provided with the GFE by the broker on wholesale transactions. Caliber will deliver a copy as well.

Caliber requires all Wholesale customer(s) are provided with a *RESA Homeownership Counseling* Disclosure within 3 business days of the loan application (1003) date. The broker's document provider should have updated their disclosure packages to include the disclosure. If this is not the case, the broker can generate and provide the *Homeownership Counseling* list from the Consumer Finance Protection Bureau (CFPB) website and manually add the following items to the PDF prior to providing it to the borrower:

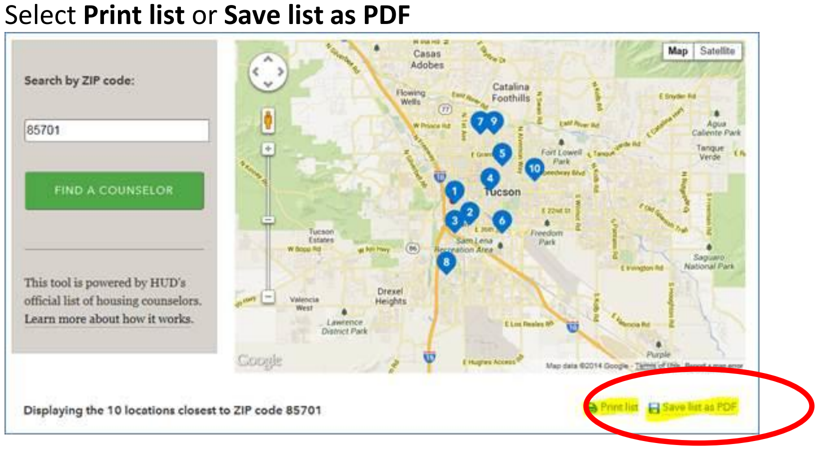
- the date the list is provided to the customers
- loan number

Note: The customer(s) are not required to sign the *Homeownership Counseling* list.

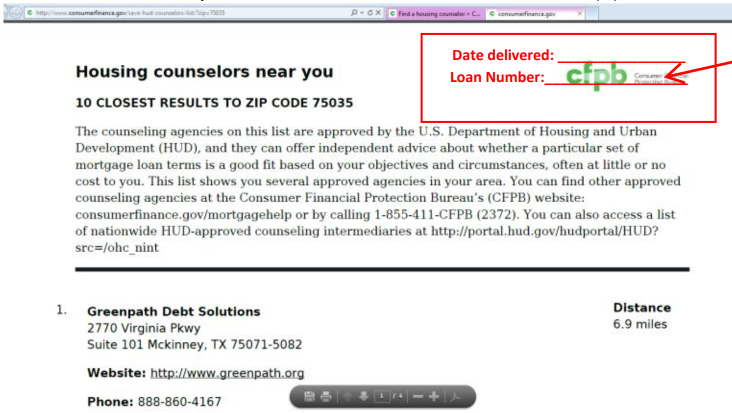
The following are steps for brokers to generate a list of *Homeownership Counseling* Agencies near the borrower:

1. Go to http://www.consumerfinance.gov/find-a-housing-counselor
2. Enter the customer's current zip code and click **Find A Counselor**

3. Select **Print list** or **Save list as PDF**



4. Manually add date delivered to customer(s) and loan number



Date delivered:

Loan Number:

Housing counselors near you

10 CLOSEST RESULTS TO ZIP CODE 75035

The counseling agencies on this list are approved by the U.S. Department of Housing and Urban Development (HUD), and they can offer independent advice about whether a particular set of mortgage loan terms is a good fit based on your objectives and circumstances, often at little or no cost to you. This list shows you several approved agencies in your area. You can find other approved counseling agencies at the Consumer Financial Protection Bureau's (CFPB) website: consumerfinance.gov/mortgagehelp or by calling 1-855-411-CFPB (2372). You can also access a list of nationwide HUD-approved counseling intermediaries at http://portal.hud.gov/hudportal/HUD?src=/ohc_nint

1. **Greenpath Debt Solutions**
2770 Virginia Pkwy
Suite 101 Mckinney, TX 75071-5082

Website: http://www.greenpath.org

Phone: 888-860-4167

Distance
6.9 miles

Add

Q: Will Caliber continue to offer minimum Lender Paid Compensation?

A: No. Effective, January 1, 2014 Caliber will no longer minimum Lender Paid Compensation.

Q: What changes should we expect for borrower Appraisal Delivery (ECOA Valuation Delivery)?

A: Effective for all loan applications received on or after January 18th, 2014, Caliber is required to deliver all written valuations (not only the appraisal), free of charge and promptly upon completion or at least three business days prior to consummation, whichever is earlier. Also note:

- Valuations must be delivered on loans that are cancelled or denied within 30 days of the cancellation or denial.
- Currently, Caliber delivers appraisals to our borrowers, but borrowers should expect to see an increased amount of communication as other types of valuations will now need to be delivered.
- A borrower may waive the 3 business day waiting period if the waiver is made at least three business days prior to consummation. If waived, valuations will be delivered no later than closing.
- Borrowers who choose to receive disclosures electronically will receive their valuations via DocuSign.

Q: What should I do if I have additional questions that are not addressed in the Dodd Frank Resources located on the Training page of MyCaliber.com?

A: You can send an email to the Dodd Frank distribution group at DoddFrankQuestions@caliberhomeloans.com.